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COUNTY OF HAWAI'I

Electronically Filed
THIRD CIRCUIT
3CCV-24-0000033
12-MAR-2024
04:30 PM
Dkt. 41 MD

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

KEAAU DEVELOPMENT PARTNERSHIP
LLC,

Plaintiff,

vs.

PATRICK JOHN LAWRENCE, JR. DBA AS
PJ'S CONTSTRUCTION; JANEL M.
ARAUJO INC; JANEL ARAUJO; ROBERT
C. SMELKER; ANNALEINE MELICIA
REYNOLDS; LEORA WHITE
THOMPSON; HEIRS OR ASSIGNS OF
LEORA WHITE THOMPSON; COUNTY
OF HAWAI'I, JOHN DOES 1-10; JANE
DOES 1-10; DOE PARTNERSHIPS 1-10;
DOE CORPORATIONS 1-10; DOE
ENTITIES 1-10; DOE TRUSTS 1-10; AND
DOE GOVERNMENT AGENCIES 1-10;

Defendants.

CIVIL NO. 3CCV-24-0000033
(Other Civil Action)

**DEFENDANT COUNTY OF HAWAI'I'S
MOTION TO DISMISS PLAINTIFF'S
VERIFIED COMPLAINT, FILED
JANUARY 30, 2024; MEMORANDUM IN
SUPPORT OF MOTION; NOTICE OF
HEARING; EXHIBIT 1; CERTIFICATE OF
SERVICE**

JUDGE: Honorable Henry T. Nakamoto
HEARING DATE: April 17, 2024
HEARING TIME: 8:30 a.m.
TRIAL DATE: Not Set

**DEFENDANT COUNTY OF HAWAI‘I’S MOTION TO DISMISS PLAINTIFF’S
VERIFIED COMPLAINT, FILED JANUARY 30, 2024**

Defendant COUNTY OF HAWAI‘I (“County”), by and through its undersigned counsel, hereby respectfully moves this Honorable Court for an order dismissing any and all claims with prejudice from the *Verified Complaint* (“Complaint”) filed by Plaintiff KEAAU DEVELOPMENT PARTNERSHIP LLC (“Plaintiff”) as Dkt. 1 on January 30, 2024 against the County.

This Motion is made pursuant to Rule 7 and 12 of the Hawai‘i Rules of Civil Procedure (“HRCPP”), Rule 7 of the Rules of the Circuit Court, the attached Memorandum in Support of Motion, and the records and files herein and on other grounds as may be adduced at a hearing on this motion.

Dated: Hilo, Hawai‘i, March 12, 2024.

COUNTY OF HAWAI‘I, Defendant

By: /s/ Sherilyn K. Tavares
SHERILYN K. TAVARES
Deputy Corporation Counsel
Its Attorney

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI'I

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Defendants.

CIVIL NO. 3CCV-24-0000033
(Other Civil Action)

MEMORANDUM IN SUPPORT OF
MOTION

JUDGE: Honorable Henry T. Nakamoto
HEARING DATE: April 17, 2024
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MEMORANDUM IN SUPPORT OF MOTION

I. INTRODUCTION

In order to prevail on a claim of negligence, a plaintiff is required to prove all four of the necessary elements of negligence: (1) a duty, or obligation, recognized by the law; (2) a breach of said duty; (3) a causal connection between the conduct and the resulting injury; and (4) actual loss or damage. *Molfino v. Yuen*, 134 Haw. 181, at 184, 339 P.3d 679, at 682 (2014) citing *Takayama v. Kaiser Found. Hosp.*, 82 Haw. 486, 498-99, 923 P.2d 903, 915-916 (1996). A prerequisite to any negligence action is the existence of a duty owed by the defendant to the plaintiff. *Id.* The existence of a duty is entirely a question of law. *Id.* citing *Hao v. Campbell Estate*, 76 Haw. 77, 80 (1994).

The question of whether one owes a duty to another must be decided on a case-by-case basis. *McKenzie v. Hawai'i Permanente Med. Group, Inc.*, 98 Haw. 296, 301, 47 P.3d 1209, 1214 (2002). In *McKenzie*, the Hawai'i Supreme Court was “reluctant to impose a new duty upon members of our society without any logical, sound, and compelling reasons taking into consideration the social and human relationships in our society.” *Id.* Likewise in *Cootey*, the Court declined to impose a duty where none previously existed. *Cootey v. Sun Investment, Inc.*, 68 Haw. 480, 718 P.2d 1086 (1986). Finally, the Court held “that policy considerations counsel against the judicial creation of a legal duty under the common law, leading to negligence liability.” *Molfino v. Yuen*, 134 Haw. 181, 187, 339 P.3d 679, 685 (2014)

The County owes no duty to the Plaintiff under the facts presented in this case. The County has no legal obligation to conduct independent research on a property's location - including its meets and bounds through land survey's; to do its own architectural study on any building plan stamped and submitted by a licensed architect or engineer; nor does the County have a legal obligation to conduct its own engineering analysis on any permit application. All the County is obligated to do is review the submission received for compliance with the law.

Therefore, all claims for negligence yielded against the County in this case are clearly without merit and should be dismissed with prejudice because it is defeated as a matter of law.

II. BACKGROUND

On January 30, 2024, Plaintiff filed her *Verified Complaint* (“Complaint”) alleging breach of contract, negligent misrepresentation, breach of fiduciary duty, negligence, deceptive trade practices, and unjust enrichment. Plaintiff asserts a single claim against the County:

COUNT V: NEGLIGENCE AS TO DEFENDANT COUNTY OF HAWAI'I, *See* Complaint ¶¶ 75-79, attached hereto as Exhibit “1”.

The Complaint asserts as facts:

1. Plaintiff is the record owner of the property known on the tax map of the County of Hawai'i Tax Map Key ("TMK"): (3) 1-5-028-115 ("115"). *Id.* ¶ 2.
2. Defendant ANNALEINE MELICIA REYNOLDS ("Reynolds") is the record owner of the real property known on the tax map of the County of Hawai'i as TMK: (3) 1-5-028-114 ("114"). *Id.* ¶ 4.
3. Plaintiff hired Defendant PATRICK JOHN LAWRENCE, JR. DBA AS PJ'S CONSTRUCTION ("Defendant PJ"), Defendant JANEL ARAUJO ("Defendant Araujo"), and Defendant ROBERT C. SMELKER ("Defendant Smelker") to design, engineer, and construct a house on 115. *See* Exhibit "1".
4. "Plaintiff *entirely relied*" on Defendant PJ to build homes for her and Defendant PJ was solely responsible for "*locating the propert[y]*", pulling all respective permits, engaging subcontractors, and ensuring the subcontractors obtained their necessary permits through completion and final inspection by the County of Hawai'i." *Id.* at ¶ 16-17 (emphasis added).
5. Based on Plaintiffs successful preexisting relationship with Defendant PJ, "Plaintiff *entirely relied* upon Defendant PJ to develop 115." *Id.* at ¶ 26 (emphasis added).
6. Plaintiff offered Defendant PJ to "construct a residence on 115, in exchange for payment on a fee schedule for labor and materials." *Id.* ¶ 49.
7. Defendant PJ constructed a residence on 114. *Id.* ¶ 39.
8. Defendant PJ "materially breached the contract by constructing the house on the wrong lot." *Id.* ¶ 52.

9. Plaintiff claims that the County “owed Plaintiff . . . a duty or obligation, recognized by the law, requiring it to conform to a certain standard of conduct for the protection of others against unreasonable risks, by correctly and properly carrying out its inspections of construction projects on the correct real property associated with the County of Hawai’i permits.” *Id.* ¶ 76 (emphasis added).
10. Plaintiff claims the County, through the employees of the Department of Public Works, “breached said duty and failed to conform to the required standard of conduct when it allowed the project to pass various stages in the construction of the project even though the project was being constructed on the wrong lot, and not the property associated with lot 115.” *Id.* ¶ 77 (emphasis added).
11. Plaintiff claims that the County’s “conduct was the direct and proximate cause of Plaintiff’s damages, and had the County conformed to the appropriate standard of care in inspecting the project, it would have identified early on in the project inspection that the project was not being built on the correct lot.” *Id.* ¶ 79 (emphasis added).

III. STANDARD OF REVIEW

HRCP Rule 12(b)(6) requires the dismissal of a complaint “for failure to state a claim upon which relief can be granted.” In evaluating the sufficiency of a complaint under HRCP Rule 12(b)(6), well-pleaded allegations of fact are taken as admitted and the Complaint should be dismissed if the claim is “clearly without any merit.” *Rosa v. CWJ Contractors*, 4 Haw. App. 210, 215, 664 P.2d 745, 749 (Haw. Ct. App. 1983); HRCP 12(b)(6).

In this regard, dismissal is warranted only if the claim is “clearly without merit” where there is “an absence of law to support a claim of the sort made, or of facts sufficient to make a

good claim, or in the disclosure of some fact which will necessarily defeat the claim.” *Id.* (citations omitted)(emphasis added). Thus, a complaint should be dismissed if it appears beyond doubt the plaintiff can prove no set of facts in support of her claim entitling her to relief. *Kealoha v. Machado*, 131 Hawai‘i 62, 74, 315 P.3d 213, 223 (2013).

IV. ARGUMENT

A. Plaintiff is Unable to Prove the Essential Elements of Negligence.

Plaintiff asserts a single claim against the County - Negligence. *See* Exhibit “1”. In order to prevail on a negligence claim, Plaintiff is required to prove all four of the necessary elements of negligence: 1) a duty, or obligation, recognized by law, requiring the defendant to conform to a certain standard of conduct, for the protection of others against unreasonable risks; 2) a failure on the defendant’s part to conform to the standard required: a breach of the duty; 3) a reasonably close causal connection between the conduct and the resulting injury; and 4) actual loss or damage. *See Molfino*, at 184, 682; citing *Takayama v. Kaiser Found. Hosp.*, 82 Haw 486, 498-99, 923 P.2d 903, 915-16 (1996). Plaintiff is unable to prove all necessary elements of negligence as a matter of law and therefore, dismissal is required.

1. The County Owed No Duty Recognized by Law to Plaintiff.

The fundamental prerequisite in any determination of liability for negligence is the existence of a duty owed to the plaintiff that requires the defendant to conform to a certain standard of conduct for the protection of the plaintiff against unreasonable risks. *McKenzie v. Hawai‘i Permanente Medical Group, Inc.*, 98 Haw. 296, 298, 47 P.3d 1209, 1211 (2002) (emphasis added). The existence of a duty is entirely a question of law. *Kelley v. Kokua Sales & Supply, Ltd.*, 56 Haw. 204, 209, 532 P.2d 673, 676 (1975); *Ruf v. Honolulu Police Dept.*, 89 Haw. 315, 320, 972 P.2d 1081, 1086 (1999). In *Cootey*, the Court elected to limit the County’s

liability. *Cootey v. Sun Inv., Inc.*, 68 Haw. 480, 483, 718 P.2d 1086, 1090 (1986). The scope of duty is subject to limitation because without reasonable and proper limitation, a defendant would be confronted with an unimaginable, unbearable, and totally unpredictable liability. *Id.* (Citation omitted).

The Court stated that “[g]overnment is not intended to be an insurer of all the dangers of modern life, despite its ever-increasing effort to protect its citizens from peril.” *Id.* at 485, citing *Lorshbough v. Township of Buzzle*, 258 N.W.2d 96, 102 (Minn.1977). Government should not be “liable for all injuries sustained by private persons as a result of governmental activity, even though doing so would spread the losses over the largest possible base.” *Id.* (citation omitted). *See also Molfino*, 134 Haw. 181, 185, 339 P.3d 679, 683 (2014). Government agencies must still be able to function effectively for their own “socially approved ends.” *Id.* (citation omitted). Generally, the budget and personnel allocations of a county government indicate that its function is “not intended to conduct in-depth engineering studies of its own to guarantee the adequacy” of building plans prior to granting its approval. *Cootey*, at 486 (citation omitted).

The task of County employees is to review the building plans submitted by a property owner or developer to assess its compliance with the law. *Cootey*, at 486, 1091 (citation omitted). The County is not required to conduct its own land surveys, engineering analysis, architectural studies, or title searches to ensure the validity and correctness of the property owner's plans. *Id.* at 483-486 (emphasis added). To require the County to do so would place the County as an insurer of the adequacy of the contractors’ plans, designs, and construction. *Id.* at 486 (emphasis added). The burden of these technical specifications rests with the licensed contractor and licensed architect who stamps and approves the plans.

If the County were to be liable for an alleged failure during the inspection process to discover an error in the staking of the property that could have only been discovered by an independent survey, the effect would be to impermissibly reallocate the County's resources, reorder its priorities, and set policies that strictly belong to the legislative body. *Id.* The exposure of such liability would have a result that is contrary to public interest. *Id.*

Here, when County inspectors met with the contractor, Defendant PJ, the lot had already been cleared and prepared for construction of a house. At no time did the inspectors have reason to believe that the building was not being built on the correct lot. There were at least eight (8) necessary inspections: Foundation, Foundation Plumbing, Framing, Insulation, Lathing, Final Electrical, Final Plumbing, and Final Building Inspection. *Hawaii County Code*, Chapter 5, Section 5-8-4. The procedure requires the person doing the work authorized by the permit to file a request for inspection with the County. *HCC* 5-8-3(a). It is the “duty of the person doing the work authorized by the permit, to make sure that the work will stand the tests prescribed” in the construction code. *HCC* 5-8-3(b) (emphasis added). Each required inspection resulted in approval by County inspectors. *See* Exhibit “I” at ¶ 35-36. Each inspection required the presence of the contractor, Defendant PJ, to be present on the job site. *HCC*, 5-8-4(b)(1). Nothing in the Complaint suggests that County inspectors acted with malice in performing their prescribed duties when conducting the inspections.

Plaintiff's claim that the County owed her a duty, one recognized by the law, flies in the face of these well-established principles and the facts of this case. The County is not required to conduct its own technical research to ensure that a developer is building a permitted structure on the correct lot when the contractor himself is required to be on site during all inspections. The

only notice the County inspector had as to the location of the property was to meet Defendant PJ at the job site that he requested each inspection for.

Based on well-established case law and the facts presented in the Complaint, the County owes no duty to Plaintiff. To find the County has a duty, and is therefore liable, would be to create an unwarranted and unstoppable risk of liability.

2. There is No Breach of Duty Because There is No Evidence that the County Failed to Conform to the Legal Standard Required.

A breach of duty owed to Plaintiff by Defendants is an essential element of a cause of action in negligence only after the basic principle is overcome – that there is a duty owed by the defendant to the plaintiff. *Tabieros v. Clark Equipment Co.*, 85 Haw. 336, 353, 944 P.2d. 1279, 1296 (1997). Therefore, if Plaintiff can prove that a duty does exist, Plaintiff must next prove that the defendant breached that duty. Plaintiff is obligated to provide such evidence to support her claim. *Dairy Road Partners v. Island Ins. Co.*, 92 Haw. 398, 419, 992 P.2d 93, 114 (2000). Here, because there is no duty, the County could not have breached the standard.

The Complaint alleges that the County “failed to conform to the required standard of conduct[.]” See Exhibit “1” at ¶ 77. Plaintiff fails to provide any legal standard, either in common law or statutorily, for this alleged standard of conduct. At best, Plaintiff can only show that County employees followed the duty created in the County Code when it timely approved the application for a building permit, conducted periodic inspections at the job site as required by the Construction Code, and that the home ultimately passed final inspection. Plaintiff cannot prove that County employees acted in bad faith or with malice in approving the building permit application and thereafter conducting the required inspections. *Hawai’i County Code*, Section 5-2-8.

The County Code does not create a legal duty on employees, nor does it impose a duty on the Department that holds the jurisdiction over the issuance of permits or any inspection.

Hawai'i County Code, 5-8-2(a)¹. In *Molfino*, the Court examined policy considerations and decided against the judicial creation of a legal duty for potential negligence liability to be imposed upon the County. *Molfino* at 186 (citation omitted).

Because there is no duty, the County could not have breached the standard.

3. Plaintiff is Unable to Prove the Necessary Element of Causation

For causation, the Plaintiff must prove the Defendant's negligence was a substantial factor in causing the damage. *Zaragoza v. CMS Monitoring, Inc.*, 195 P.3d 711, 2008 WL 4560724 (Haw. App. 2008)². In *Cootey*, the plaintiffs failed to adduce evidence that the County knew or should have known, based on the facts, that their home was possibly subject to flooding damage. 68 Haw. at 487, 1092.

In the present case, it is beyond dispute defendant PJ built the house, that Plaintiff paid Defendant PJ approximately \$307,318.57 for building the house, that Plaintiff immediately marketed the house for sale, that Plaintiff had obtained a buyer for the house, that Plaintiff was in contract to sell the house, and that it was not until escrow was well under way that it was

¹ Section 5-2-8(a): The authorized personnel charged with the administration and enforcement of the construction code, while acting in good faith and without malice in the discharge of the duties required by the construction code or other applicable law, shall not thereby be rendered personally liable for damages that may accrue to persons or property as a result of an act or by reason of an act or omission in the discharge of such duties.

Section 5-2-8(b): Neither the County nor any department . . . shall be held liable or responsible for any damage or injury caused by or resulting from the issuance of any permit, or any inspection or approval or issuance of a certificate of inspection, made under the provisions of the construction code.

² Although this decision is unpublished, it is instructive on the issue of causation. It is also proper to cite to for its persuasive value pursuant to Rule 35 of the Rules of Appellate Procedure which permits citation of unpublished decisions after July 1, 2008. Here, it is proper for instructive value in that Plaintiff is unable to show evidence that the County specifically caused the damage she is alleging.

discovered through the title search that the house was built on the adjacent property, 114. *See* Exhibit “1” at ¶ 36-39.

Plaintiff clearly believed that she owned a house built on 115. Defendant PJ clearly believed he built a house on 115. It is without merit for Plaintiff to claim that the County’s actions were a substantial factor in causing the alleged damage when at no time was there any notice, or even the slightest suspicion, that Defendant PJ had built the house on the wrong lot. It is not the County’s duty to ensure that Defendant PJ accurately “located” the property. *See* Exhibit “1” at ¶ 17. The fact that lot 114 and 115 are adjacent to each other, on the same street, precludes causation because the County did not know, nor could have known, without doing its own independent research – above and beyond that of Plaintiff and Defendant PJ – that the construction was taking place on 114.

Causation must be proved and is never presumed. “When the trier of fact would be required to speculate and guess on too many elements in the chain of causation a verdict may be directed for the defendant.” *Dzurik v. Tamura*, 44 Haw. 327, 329, 359 P.2d 165, 165 (1960). A court cannot rely upon speculation to support its decision. *Pioneer Mill Co., Ltd. v. Dow*, 90 Haw. 289, 295, 978 P.2d 727, 733 (1999); *Waimea Falls Park, Inc. v. Brown*, 6 Haw. App. 83, 96, 712 P.2d 1136, 1145 (1985). Here, Plaintiff encourages speculation that had the County performed what ultimately is Plaintiff’s due diligence, she would have been spared from this situation. As established previously, there is no duty on the County to take such action.

Plaintiff is unable to prove causation and therefore, her negligence claim fails.

4. Damages Sought by Plaintiff are Speculative and Not Recoverable

Plaintiff alleges that she could have made a profit of approximately \$200,000-\$300,000. *See* Exhibit “1” at ¶ 44. She further claims an out-of-pocket expense of \$307,318.57. *Id.* The

economic loss rule precludes a plaintiff from recovering purely economic losses in tort. *City Exp., Inc., v. Express Partners*, 87 Haw. 466, 469 959 P.2d 836, 839 (1998). The Hawai'i

Supreme Court explained:

The policy behind this principle is to prevent potentially limitless liability for economic losses: While the physical consequences of negligence usually have been limited, the indirect economic repercussions of negligence may be far wider, indeed, virtually open ended. *Id.* (internal quotation marks and citations omitted).

Therefore, purely economic losses are generally not recoverable in a negligence action.

Plaintiff asserts that she is being deprived of the benefit of her business dealing with Defendant PJ and the profits she was to gain from the sale of the house. *See* Exhibit “1” at ¶ 52. However, a buyer's desire to enjoy the benefit of his bargain is not an interest that tort law traditionally protects. *Association of Apartment Owners of Newtown Meadows ex. rel. its bd. Of Directors v. Venture 15, Inc.* 115 Haw. 232, 290, 167 P.3d 225, 282 (2007). Plaintiff's speculative damages are not recoverable against the County.

B. Hawai'i County Code Limits Liability of Authorized Personnel.

If a duty and thus liability is to be imposed upon the County Department of Public Works to essentially act as an independent escrow company, architect, engineer, and developer and perform all these duties with unerring accuracy, it should be rightfully imposed by the legislative body where the process can be assessed, and economic resources can be allocated to create this heightened responsibility. *See Cootey*, 68 Haw. 480 at 486 (citation omitted). In *Molfino*, the Court held that the County of Hawai'i's Planning Department did not have a duty to maintain its TMK filed in accurate, relevant, timely, and complete condition at all times. 134 Haw. 181, 187, 339 P.3d 679, 685 (2014). Policy considerations counsel against the judicial creation of a legal duty under the common law. *Id.* Legislative action is the appropriate venue for the establishment of a legal duty. *Cootey* at 485.

Here, the County’s legislative body established the Construction Code to protect the health and safety of its residents, and the means for administratively carrying out the duties related to “permitting; enforcement; inspections; and related procedures.” *HCC*, Chapter 5, Section 5-1-2. The purpose was to “promote consistency in procedures across construction disciplines.” *Id.* In this process, the County Council specifically carved out limitations on liability for both County employees and the Department as they carry out their defined functions in an efficient and effective manner. Just because the Department of Public Works approved the building permit application and thereafter conducted its statutorily required inspections, these actions alone do not obligate the County to assume the inherent risks of an absentee property owner. The County owes no duty to Plaintiff to act as her special agent.

The County’s Construction Code is clear. Individual employees “while acting in good faith and without malice in the discharge of the duties required by the construction code or other applicable law, shall not be rendered personally liable for damages” that may result from the discharge of their duties. *HCC* §5-2-8(a). Nowhere in the Complaint does Plaintiff allege County inspectors acted with malice at any time during the required inspections. The County owes no duty to Plaintiff to act as her special agent.

The Code further states that “neither the County nor any department, board, commission, officer, employee, or agent shall be held liable or responsible for any damage or injury *caused by or resulting from the issuance of any permit, or any inspection or approval or issuance of a certificate of inspection*, made under the provisions of the construction code. *HCC* §5-2-8(b) (emphasis added). Thus, the County is not liable to Plaintiff simply because it reviewed and approved the building application submitted by Plaintiff and Defendant PJ, thereafter, issued the

building permit, conducted required inspections, and passed the final building inspection. The County owes no special duty to Plaintiff during this administrative process.

The County Code properly limits liability for the County and eliminates the duty Plaintiff is seeking to establish here. As established in *Cootey*, and reaffirmed in *Molfino*, to hold that the County owes a duty to Plaintiff to administer and enforce the applicable laws, rules, and regulations and directives of the County to Plaintiffs specifications would be “too expansive in light of public policy considerations versus liability and remedial considerations.” 68 Haw. at 483; 134 Haw. 181 at 185 (citations omitted).

V. CONCLUSION

Plaintiff’s sole claim against the County is that the County owed her a legal duty to realize that her house was being built by her hired license contractor on the wrong lot, the one adjacent to hers, by correctly and properly carrying out its inspections of construction projects on the correct real property. Plaintiff aspires that this Court will establish a heightened legal duty on the County, one that has long been rejected by the Hawai’i Supreme Court. Without the Court facilitating this objective, Plaintiff is unable to prove the essential elements of negligence. Further, Hawai’i County Code clearly bars the liability claims Plaintiff asserts.

Based on the foregoing, the County respectfully requests that its Motion to Dismiss the Complaint be granted with prejudice, and judgement be entered in favor of the County, and against Plaintiff on all claims.

Dated: Hilo, Hawai’i, March 12, 2024.

Respectfully Submitted,

By: /s/ Sherilyn K. Tavares
SHERILYN K. TAVARES
Deputy Corporation Counsel
Its Attorney

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STATE OF HAWAI'I

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DOE GOVERNMENT AGENCIES 1-10;

Defendants.

CIVIL NO. 3CCV-24-0000033
(Other Civil Action)

NOTICE OF HEARING

NOTICE OF HEARING

TO: Peter S. R. Olson
P.O. Box 1688
Kailua-Kona, Hawai'i 96745
Attorney for Plaintiff

NOTICE IS HEREBY GIVEN that the foregoing motion shall come on for hearing
before the Honorable Judge Henry T. Nakamoto, Judge of the above-entitled court, on April 17,
2024 at 8:30 a.m., or soon thereafter as the matter can be heard, in his courtroom located at Hale
Kaulike, 777 Kilauea Avenue, Hilo, Hawai'i, 96720.

Dated: Hilo, Hawai'i March 12, 2024.

COUNTY OF HAWAI'I, Defendant

By: /s/ Sherilyn K. Tavares
SHERILYN K. TAVARES
Deputy Corporation Counsel

OLSON & SONS
Attorneys-at-Law
A Law Corporation

BY: PETER S.R. OLSON 8433
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Electronically Filed
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30-JAN-2024
04:38 PM
Dkt. 1 CMPS

Attorneys for KEAAU DEVELOPMENT PARTNERSHIP LLC

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

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REYNOLDS; LEORA WHITE THOMPSON;
HEIRS OR ASSIGNS OF LEORA WHITE
THOMPSON; COUNTY OF HAWAII,
JOHN DOES 1-10; JANE DOES 1-10; DOE
PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; DOE ENTITIES 1-
10; DOE TRUSTS 1-10; AND DOE
GOVERNMENTAL AGENCIES 1-10;

Defendants.

CIVIL CASE NO.
(OTHER CIVIL ACTION)

VERIFIED COMPLAINT; DEMAND FOR
JURY TRIAL; SUMMONS

VERIFIED COMPLAINT

Comes Plaintiff, KEAAU DEVELOPMENT PARTNERSHIP LLC, by and
through its attorneys, Olson & Sons, Attorneys-at-Law, A Law Corporation, for its Complaint
against the defendants, states and alleges as follows:



Received

FEB 21 2024

Office of the Corporation Counsel
County of Hawaii

Steve accepted
service

A handwritten signature in black ink, appearing to be 'MS' followed by a long horizontal stroke.

EXHIBIT 1

A. THE PARTIES

1. KEAAU DEVELOPMENT PARTNERSHIP LLC is a domestic for-profit limited liability company (hereinafter "Plaintiff") and is registered to do business in the State of Hawaii.

2. Plaintiff is the record owner of the property known on the tax map of the County of Hawaii as Tax Map Key ("TMK"): (3) 1-5-028-115 ("115"), being more particularly described as follows:

PARCEL FIRST:

ALL OF THAT CERTAIN PARCEL OF LAND SITUATE AT KEAAU, DISTRICT OF PUNA, ISLAND AND COUNTY OF HAWAII, STATE OF HAWAII, DESCRIBED AS FOLLOWS:

LOT 984, AREA 1.00 ACRE, MORE OR LESS, IN BLOCK 9, AS SHOWN ON MAP 64, FILED WITH LAND COURT APPLICATION NO. 1053 (AMENDED) OF W. H. SHIPMAN, LIMITED.

PARCEL SECOND:

AN EASEMENT OVER THE FOLLOWING ROADWAY LOTS TO BE USED IN COMMON WITH OTHERS ENTITLED THERETO, FOR ROADWAY AND UTILITIES PURPOSES ONLY, SUBJECT, HOWEVER, TO A POWER IN FAVOR OF HAWAIIAN PARADISE PARK CORP., ITS SUCCESSORS AND ASSIGNS, TO CONVEY SAID ROADWAY LOTS OR ANY OF THEM, TO APPROPRIATE GOVERNMENTAL AUTHORITY FOR USE AS PUBLIC ROADWAYS, OR TO CONVEY UNDIVIDED INTEREST THEREIN TO THE OWNERS OF ALL LOTS REQUIRING OR FOR WHOM IT WOULD BE CONVENIENT TO HAVE ACCESS OVER THE SAME, AND UPON ANY SUCH CONVEYANCES SAID EASEMENT OVER THE ROADWAY LOTS CONVEYED SHALL TERMINATE.

LOT 1508-A, IN BLOCK 8, AS SHOWN ON MAP 69;
LOTS 1509, 1510, 1511 AND 1512, IN BLOCK 8, AS SHOWN ON MAP 60;
LOT 1638-H, IN BLOCK 7, AS SHOWN ON MAP 63;
LOT 1559 AND 1560, IN BLOCK 9, AS SHOWN ON MAP 64; AND
LOT 1, IN BLOCK 11, AS SHOWN ON MAP 66, OF SAID APPLICATION NO. 1053 (AMENDED);
AND LOT 4-C, AS SHOWN ON MAP 2, OF LAND COURT APPLICATION NO. 1689.

NOTES:

ROADWAY LOT 1508-A, BLOCK 8, AS SHOWN ON MAP 69, WAS SUBDIVIDED INTO LOTS 1508- A-1 AND 1508-A-2, BLOCK 8, AS SHOWN ON MAP 466, AS SET FORTH BY LAND COURT ORDER NO. 98608, RECORDED JULY 11, 1990.

ROADWAY LOT 1508-A-2 HAS BEEN CONVEYED TO THE STATE OF HAWAII.

BEING ALL OF THE PREMISES DESCRIBED IN AND COVERED BY TRANSFER CERTIFICATE OF TITLE NO. 1,164,260
ISSUED TO: SONIA IYER, SINGLE

(LAND COURT DEED RECORDED SEPTEMBER 28, 2018 AS LAND COURT DOCUMENT NO. T-10497039 OF OFFICIAL RECORDS.)

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion sex, handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as

contained in the Land Court Deed recorded as Land Court Document No. 523416 of Official Records.

3. Road maintenance fees and/or other obligations affecting the premises and not yet required to be paid.

3. Defendant PATRICK JOHN LAWRENCE, JR. is a licensed general contractor holding a "B" class license with the State of Hawaii as a sole proprietor but does business as PJ'S CONSTRUCTION ("PJ").

4. Defendant ANNALEINE MELICIA REYNOLDS ("Reynolds") is the record owner of the real property known on the tax map of the County of Hawaii as TMK: (3) 1-5-028-114 ("114"), more particularly described as follows:

All of that certain parcel of land situate at Keaau, District of Puna, Island and County of Hawaii, State of Hawaii, described as follows:

LOT 985, area 1.000 acre, more or less, BLOCK 9, as shown on Map 64, filed in the Office of the Assistant Registrar of the Land Court of the State of Hawaii with Land Court Application No. 1053 (amended) of W. H. Shipman, Limited.

Together with an easement over the following roadway lots to be used in common with others entitled thereto, for roadway and utilities purposes only, subject, however, to a power in favor of Hawaiian Paradise Park Corp., its successors and assigns, to convey said roadway lots or any of them, to appropriate governmental authority for use as public roadways, or to convey undivided interests therein to the owners of all lots requiring or for whom it would be convenient to have access over the same, and upon any such conveyance said easement over the roadway lots conveyed shall terminate, more particularly described in Exhibit "A", attached hereto and made a part hereof.

Lot 1508-A, in Block 8, as shown on Map 69;
Lots 1509, 1510, 1511 and 1512, in Block 8, as shown on Map 60;
Lot 1638-H, in Block 7, as shown on Map 63;
Lots 1559 and 1560, in Block 9, as shown on Map 64; and
Lot 1, in Block 11, as shown on Map 66, of said Application No. 1053 (amended); and
Lot 4-C, as shown on Map 2 of Land Court Application No. 1689.

-Note:- Roadway Lot 1508-A, Block 8, as shown on Map 69, was subdivided into Lots 1508-A-1 and 1508-A-2, Block 8, as shown on Map 466, asset forth by Land Court Order No. 98608, filed July 11, 1990.

Roadway Lot 1508-A-2 has been conveyed to the State of Hawaii.

Being land(s) described in Transfer Certificate of Title No. 145,250 issued to LEORA WHITE THOMPSON, unmarried.

BEING THE PREMISES ACQUIRED BY LAND COURT DEED

GRANTOR: HAWAII PARADISE PARK CORP., a Hawaii corporation
GRANTEE: LEORA WHITE THOMPSON, unmarried
DATED: December 28, 1970
FILED: Land Court Document No. 561164

SUBJECT, HOWEVER, to the following:

1. Mineral and water rights of any nature.
2. The terms and provisions contained in the following:

INSTRUMENT: LAND COURT DEED
DATED: December 28, 1970
FILED : Land Court Document No. 561164

5. Upon information and belief, Defendant Reynolds is a resident of the State of California.

6. Upon information and belief, Defendant LEORA WHITE THOMPSON is the prior record owner of 114, however; it appears she lost 114 pursuant to a County of Hawaii Tax Lien sale, which in turn deeded 114 to Reynolds in 2018.

7. Upon information and belief, Defendant LEORA WHITE THOMPSON may be deceased, and therefore, Defendants HEIRS OR ASSIGNS OF LEORA WHITE THOMPSON are included in this Complaint (collectively "Thompson Defendants")

8. Defendant JANEL M ARAUJO INC is an expired and involuntarily terminated corporation registered in the State of Hawai'i, and Defendant JANEL ARAUJO is a resident of the County and State of Hawai'i (collectively "Araujo").

9. Defendant ROBERT C SMELKER is a resident of the State of Hawaii holding an architectural license, AR-3560, in the State of Hawai'i ("Smelker")

10. The defendant county of Hawai'i is a municipality of the State of Hawai'i, comprising the Island of Hawai'i.

11. Defendants JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10; DOE TRUSTS 1-10; AND DOE GOVERNMENTAL AGENCIES 1-10, are sued herein under fictitious names for the reason that their true names and identities are presently unknown to Plaintiff except that they are connected in some manner with Defendants, or were the agents, principals, partners, officers, directors, servants, employees, employers, co-conspirators, representatives, co-venturers, associates, consultants, vendors, suppliers, manufacturers, subcontractors, contractors, sureties, insurers, owners, lessees, sublessees, lessors, guarantors, assignees, assignors, licensees, or licensors of Defendants, or were in some manner presently unknown to Plaintiff, engaged in activities alleged herein, or were in some manner responsible for the damages alleged in this Complaint. At such time as the true names and capacities of such Defendants are ascertained, Plaintiff KEAAU DEVELOPMENT PARTNERSHIP LLC prays for leave of this Court to amend this Complaint and all subsequent proceedings herein, accordingly, and particularly to identify said parties and/or acts. Good faith efforts were made to find said persons, activities and/or identities.

B. JURISDICTION AND VENUE

12. Jurisdiction and venue are proper in this court. This Court has subject matter jurisdiction over claims under the Hawai`i Constitution, statutes, and the common law, including HRS §§ 603-21.5 and 603-21.9;

13. As to all counts, the damages exceed the minimum jurisdiction of this Court, and the location of the dispute concerning real property and improvements thereon is located on the Island of Hawai`i, State of Hawai`i.

C. PRELIMINARY ALLEGATIONS

14. Plaintiff engaged PJ, a licensed general contractor, to develop numerous vacant lots that Plaintiff owned in Hawaiian Paradise Park ("HPP").

15. In the past four to five years, PJ constructed at least 11 homes for Plaintiff in HPP.

16. Plaintiff entirely relied upon PJ to build the houses from the ground up in HPP, and PJ acted as both the contractor and the owner's representative on the project since Plaintiff's principals were not on Hawai`i Island.

17. This included locating the properties, pulling all respective permits, engaging subcontractors, and ensuring the subcontractors obtained their necessary permits through completion and final inspection by the County of Hawai`i.

18. In 2021, Plaintiff asked PJ to construct a house on 115.

19. PJ agreed on the same general terms as the parties' prior builds in HPP.

20. PJ used a "Contractor's Estimate Form" from HPM Building Supply to establish a price schedule for labor and materials.

21. Pursuant to HRS §444-25.5, PJ was required to:

(1) Explain verbally in detail to the homeowner all lien rights of all parties performing under the contract, including the homeowner, the contractor, any subcontractor, or any materialman supplying commodities or labor on the project;

(2) Explain verbally in detail the homeowner's option to demand bonding on the project, how the bond would protect the homeowner, and the approximate expense of the bond; and

(3) Disclose all information pertaining to the contract and its performance and any other relevant information that the board may require by rule.

22. PJ did not make the above disclosures to Plaintiff.

23. Pursuant to HRS §444-25.5, PJ was also required to provide a written contract to Plaintiff which:

- a. contained the same information as the verbal disclosures,
- b. contained a notice of the contractor's right to resolve alleged construction defects before commencing any litigation in accordance with section 672E-11;
- c. was signed by Plaintiff and PJ.
- d. was required to be executed prior to the start of construction.

24. PJ did not produce a written contract to Plaintiff that met these requirements.

25. PJ did not inform Plaintiff, either verbally or in writing, of Plaintiff's option to demand bonding on the construction, how the bonding would protect Plaintiff, and the expense of such.

26. Based upon Plaintiff's and PJ's preexisting relationship and successful development of their previous houses in HPP, Plaintiff entirely relied upon Defendant PJ to develop 115.

27. PJ engaged Araujo, who applied for a building permit for PJ (on behalf of Plaintiff), who was listed as the Contractor and Builder for 115 with the County of Hawaii.

28. Defendant Smelker was listed as the architect on the permit application.

29. Plaintiff relied upon Smelker's (a licensed architect) name being on the permit application that PJ and Smelker would adhere to the County's Buildings and Zoning Codes.

30. Plaintiff is unaware of the terms of Smelker, Araujo, and PJ's business relationship or arrangement to know how they allocated risk amongst each other.

31. A building permit was issued on November 24, 2021, for 115 for a "3 bedroom 2 bath dwelling with attached garage." There were also associated electrical and plumbing permits issued.

32. Work began on what Plaintiff believed to be 115.

33. PJ located the lot, and construction of a residence began, and PJ informed Plaintiff of the same.

34. During the construction process, County of Hawai'i inspectors visited the project numerous times with full knowledge of the permit for the residence was associated with 115.

35. County of Hawai'i inspectors cleared the various stages of the construction and let the project proceed.

36. Eventually, PJ constructed a residence, and it passed the County of Hawaii's final inspection.

37. Plaintiff paid PJ and his subcontractors approximately \$307,318.57 to build the house.

38. Thereafter, Plaintiff marketed 115 for sale.

39. Plaintiff obtained a buyer for 115, and during escrow, it was discovered that there was no house on 115 and that rather, PJ had constructed a house on TMK: (3) 1-5-028-114 ("114"), the real property adjacent to 115.

40. Among other things, the construction of the house on the wrong lot violated the Hawaii County Building Codes and Zoning Code.

41. Defendant Reynolds, the record owner of 114, purchased 114 through a County of Hawaii tax sale.

42. However, upon information and belief, said tax sale may have been defective, according to a title company, since the Thompson Defendants, the prior record owner of 114, may not have been properly served regarding the tax sale.

43. PJ did not obtain Defendants Reynolds or Thompsons' consent to enter onto and construct a residence on 114.

44. Plaintiff spent approximately \$307,318.57 on the residence that was constructed on real property it did not own and is therefore out of \$307,318.57 in out-of-pocket construction costs, together with approximately \$200,000 – 300,000 in lost profits, plus interest thereon, and attorneys' fees and costs, and damages,

45. Plaintiff gave PJ a notice of Plaintiff's claim on or about September 25, 2023.

46. PJ denied Plaintiff's claim.

47. Plaintiff's attempts to engage and follow through with mediation have been ignored.

COUNT I.

BREACH OF CONTRACT AS TO DEFENDANT PJ

48. Plaintiff incorporates and re-alleges paragraphs 1-47 herein.

49. Plaintiff offered PJ to construct a residence on 115, in exchange for payment on a fee schedule for labor and materials.

50. PJ accepted Plaintiff's offer, applied for a building permit, and started construction.

51. Plaintiff fully performed on its end of the bargain by paying PJ in full on the contract's terms.

52. PJ materially breached the contract by constructing a house on the wrong lot, thereby completely depriving Plaintiff of the benefit of the parties' contract.

53. Plaintiff suffered damages in an amount to be proven at trial for out-of-pocket expenses and lost profits.

54. Defendant PJ's conduct was the direct and proximate cause of Plaintiff's damages.

COUNT II.

NEGLIGENT MISREPRESENTATION AS TO DEFENDANT PJ

55. Plaintiff incorporates and re-alleges paragraphs 1-54 herein.

56. Defendant PJ supplied false information to Plaintiff, that PJ had correctly identified lot 115, as a result of the failure to exercise reasonable care (including, but not limited to, hiring a surveyor or qualified individual to locate lot 115) or competence in communicating the information (by not informing Plaintiff of the potential ambiguity in the location of lot 115);

57. Plaintiff, for whose benefit the information is supplied, suffered the loss, damages in an amount to be determined at trial.

58. Plaintiff relied upon PJ's misrepresentation that PJ had correctly located lot 115.

59. Defendant PJ's conduct was the direct and proximate cause of Plaintiff's damages.

COUNT III.

BREACH OF FIDUCIARY DUTY AS TO DEFENDANT PJ

60. Plaintiff incorporates and re-alleges paragraphs 1-59 herein.

61. Defendant PJ owed a fiduciary duty to Plaintiff based on their prior relationship and history of building houses in HPP.

62. Defendant PJ acted as the owner's representative in these projects, including lot 115.

63. Defendant PJ was conferred with Plaintiff's trust and money to ensure that the construction on lot 115 would occur on lot 115.

64. Defendant PJ breached his duties by failing to conduct his due diligence in locating lot 115 and failing to adequately inform Plaintiff of PJ's methodology in determining the location of 115.

65. Plaintiff suffered damages in an amount to be proven at trial.

66. Defendant PJ's breach of fiduciary duty was the direct and proximate cause of Plaintiff's damages.

COUNT IV.

NEGLIGENCE AS TO DEFENDANT SMELKER

67. Plaintiff incorporates and re-alleges paragraphs 1-66 herein.

68. Plaintiff had no privity of contract with Defendant Smelker.

69. Smelker owed Plaintiff a duty of care to ensure that the house the Plaintiff paid for was constructed on Plaintiff's lot, 115.

70. Smelker owed a duty of care to Plaintiff to supervise the construction of the house on lot 115.

71. Smelker had a duty to discover and report the contractor's deviation from the plans and specifications and to disclose to the owner errors in design or construction that were so obvious and well known to architect professionals, generally, that they should know and recognize them when they appear in a construction project.

72. Smelker breached these duties by failing to adequately supervise the work associated with the permit for lot 115 to catch any major defects, such as the construction of the house on the wrong lot.

73. Plaintiff suffered damages in an amount to be proven at trial.

74. Smelker's conduct was the direct and proximate cause of Plaintiff's damages.

COUNT V.

NEGLIGENCE AS TO DEFENDANT COUNTY OF HAWAII

75. Plaintiff incorporates and re-alleges paragraphs 1-74 herein.

76. Defendant County of Hawai`i owed Plaintiff, the homeowner, a duty or obligation, recognized by the law, requiring it to conform to a certain standard of conduct for the protection of others against unreasonable risks, by correctly and properly carrying out its inspections of construction projects on the correct real property associated with the County of Hawai`i's permits.

77. The County of Hawai`i, by and through its agents in the course of their employment with the County of Hawai`i, breached said duty and failed to conform to the required standard of conduct when it allowed the project to pass various stages in the construction of the project even though the project was being constructed on the wrong lot, and not the property associated with lot 115.

78. Plaintiff suffered damages in an amount to be proven at trial.

79. The County of Hawai`i's conduct was the direct and proximate cause of Plaintiff's damages, and had the County conformed to the appropriate standard of care in inspecting the project, it would have identified early on in the project inspection that the project was not being built on the correct lot.

COUNT VI.

**DECEPTIVE TRADE PRACTICES AS TO DEFENDANTS PJ, JANEL ARAUJO
THROUGH JANEL M. ARAUJO INC., AND SMELKER**

80. Plaintiff incorporates and re-alleges paragraphs 1-80 herein.

81. Upon information and belief, individually and/or collectively, Defendants PJ, Araujo, and Smelker applied for permits to the County of Hawai`i listing a licensed architect, Defendant Smelker, without expecting or ensuring that Smelker would conduct his due diligence and supervise the construction of lot 115.

82. Rather Defendants' scheme was simply to use Smelker's architectural license to stamp the plans for the house's construction while avoiding the obligations that come with it.

83. Smelker allowed the use of his stamp in furtherance of this deceptive trade practice.

84. In doing so, Defendants engaged in deceptive trade practices by

- a. passes off goods or services as those of another with respect to Araujo and PJ use of Smelker's stamp;
- b. Causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services with respect to Defendants using Smelker's stamp to apply for the permit thereby giving the impression the project was going to be supervised by a licensed architect;
- c. in doing so, Defendants caused likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another;

85. Plaintiff is entitled to statutory remedies according to Chapter 481A, Hawai'i Revised Statutes,

COUNT VII.

UNJUST ENRICHMENT AS TO DEFENDANTS REYNOLDS AND THOMPSON AND/OR HER HIERS OR ASSIGNS

86. Plaintiff incorporates and re-alleges paragraphs 1-85 herein.

87. Plaintiff conferred benefits upon Defendants Reynolds and Thompson which included, inter alia, payment for the construction of a fully permittable residence on 114.

88. Defendants Reynolds and Thompson were thus enriched, and retention of such is unjust.

89. Defendants Reynolds and Thompson have been unjustly enriched at the expense of Plaintiff and should be required to make restitution to Plaintiff in an amount to be proved at trial for damages.

COUNT VIII.

ALTERNATIVE RELIEF CONSTRUCTIVE TRUST AS TO DEFENDANTS REYNOLDS AND THOMPSON AND/OR HER HEIRS OR ASSIGNS

90. Plaintiff incorporates and re-alleges paragraphs 1- 89 herein.

91. If Defendants are unable to pay Plaintiff restitution, Defendants will be unjustly enriched.

92. Accordingly, Plaintiff is entitled to a constructive trust imposed on 114, and this Court should exercise its power in equity to order Plaintiff and Defendants to swap and exchange lots, subject to whatever terms the Court deems fair and equitable.

COUNT I
ATTORNEYS FEES

93. Plaintiff incorporates and re-alleges paragraphs 92 herein.

94. Plaintiff has incurred attorneys fees in seeking recovery of its losses associated with the failure to construct the house on lot 115.

WHEREFORE, Plaintiff KEAAU DEVELOPMENT PARTNERSHIP LLC prays for:

Judgment against Defendants, including:

1. For money judgment against Defendants either jointly or severally;
2. An award of damages according to proof;
3. An award of attorneys fees and costs of suit allowed by law;
4. Statutory remedies pursuant to Chapter 483A, HRS.
5. Equitable relief as to claims against Reynolds and Thompson Defendants

for restitution, and if not, an equitable exchange of property.

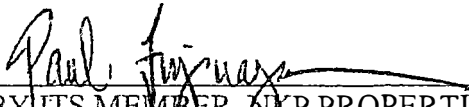
As to all Counts, for such other relief the Court deems mete and just;

As to all Counts, for leave to amend the complaint following discovery and further investigation.

I, PAUL FUJINAGA, on behalf of KEAAU DEVELOPMENT PARTNERSHIP LLC, declare the foregoing allegations to be true and correct, and upon information and belief where indicated, to the best of my knowledge belief.

DATED: Honolulu, Hawaii, January 29, 2024.

KEAAU DEVELOPMENT PARTNERSHIP LLC:



BY ITS MEMBER, NKP PROPERTIES LLC (Through Its
Manager, Paul Fujinaga, for NKP PROPERTIES LLC)

Respectfully submitted based upon the representations of Plaintiff herein.

DATED: Keauhou Mauka, Hawaii, January 29, 2024.

/s/ Peter S.R. Olson

PETER S.R. OLSON, ESQ.
Attorney for KEAAU DEVELOPMENT PARTNERSHIP LLC

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAII

KEAAU DEVELOPMENT PARTNERSHIP
LLC,

Plaintiff,

vs.

PATRICK JOHN LAWRENCE, JR. DBA AS
PJ'S CONSTRUCTION; JANEL M ARAUJO
INC; JANEL ARAUJO; ROBERT C
SMELKER; ANNALEINE MELICIA
REYNOLDS; LEORA WHITE THOMPSON;
HEIRS OR ASSIGNS OF LEORA WHITE
THOMPSON; COUNTY OF HAWAII,
JOHN DOES 1-10; JANE DOES 1-10; DOE
PARTNERSHIPS 1-10; DOE
CORPORATIONS 1-10; DOE ENTITIES 1-
10; DOE TRUSTS 1-10; AND DOE
GOVERNMENTAL AGENCIES 1-10;

Defendants.

CIVIL CASE NO.
(OTHER CIVIL ACTION)

DEMAND FOR JURY TRIAL

DEMAND FOR JURY TRIAL



Comes Plaintiff KEAAU DEVELOPMENT PARTNERSHIP LLC, by and
through its attorneys, Olson & Sons, Attorneys-at-Law, A Law Corporation, and hereby demand
a trial by jury on the Complaint herein pursuant to Rule 38, Hawaii Rules of Civil Procedure.

DATED: Keauhou Mauka, Hawaii, January 29, 2024.

/s/ Peter S.R. Olson

PETER S.R. OLSON, ESQ.

Attorney for KEAAU DEVELOPMENT PARTNERSHIP LLC

STATE OF HAWAI'I CIRCUIT COURT OF THE THIRD CIRCUIT	SUMMONS TO ANSWER CIVIL COMPLAINT	CASE NUMBER
PLAINTIFF KEAAU DEVELOPMENT PARTNERSHIP LLC	VS.	DEFENDANT(S) PATRICK JOHN LAWRENCE, JR. DBA AS PJ'S CONSTRUCTION; JANEL M ARAUJO INC; JANEL ARAUJO; ROBERT C SMELKER; ANNALEINE MELICIA REYNOLDS; LEORA WHITE THOMPSON; HEIRS OR ASSIGNS OF LEORA WHITE THOMPSON; COUNTY OF HAWAI'I, JOHN DOES 1-10; JANE DOES 1-10; DOE PARTNERSHIPS 1-10; DOE CORPORATIONS 1-10; DOE ENTITIES 1-10; DOE TRUSTS 1-10; AND DOE GOVERNMENTAL AGENCIES 1-10
PLAINTIFF'S NAME & ADDRESS, TEL. NO. OLSON & SONS, Attorneys-at-Law, A Law Corporation BY: PETER S.R. OLSON 8433 P.O. 1688 Kailua Kona, HI 96745 Telephone No. (808) 323-2677		
TO THE ABOVE-NAMED DEFENDANT(S) <p style="text-align: center;">You are hereby summoned and required to file with the court and serve upon</p> OLSON & SONS, Attorneys-at-Law, A Law Corporation, PETER S.R. OLSON 8433, P.O. Box 1688, Kailua Kona, HI 96745 <hr style="width: 80%; margin-left: 0;"/> plaintiff's attorney, whose address is stated above, an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the date of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. <p style="text-align: center;">THIS SUMMONS SHALL NOT BE PERSONALLY DELIVERED BETWEEN 10:00 P.M. AND 6:00 A.M. ON PREMISES NOT OPEN TO THE GENERAL PUBLIC, UNLESS A JUDGE OF THE ABOVE-ENTITLED COURT PERMITS, IN WRITING ON THIS SUMMONS, PERSONAL DELIVERY DURING THOSE HOURS.</p> <p style="text-align: center;">A FAILURE TO OBEY THIS SUMMONS MAY RESULT IN AN ENTRY OF DEFAULT AND DEFAULT JUDGMENT AGAINST THE DISOBEYING PERSON OR PARTY.</p>		
The original document is filed in the Judiciary's electronic case management system which is accessible via eCourt Kokua at: http://www.courts.state.hi.us	<div style="display: flex; justify-content: space-between;"> <div> Effective Date of 28-Oct-2019 Signed by: /s/ Cheryl Salmo Clerk, 3rd Circuit, State of Hawai'i </div> <div style="text-align: center;">  </div> </div>	
<div style="display: flex; align-items: center;">  <div> In accordance with the Americans with Disabilities Act, and other applicable state and federal laws, if you require a reasonable accommodation for a disability, please contact the ADA Coordinator at the Circuit Court Administration Office on HAWAII- Phone No. 808-961-7424, TTY 808-961-7422, FAX 808-961-7411, at least ten (10) working days prior to your hearing or appointment date. </div> </div>		

IN THE CIRCUIT COURT OF THE THIRD CIRCUIT

STATE OF HAWAI‘I

KEAAU DEVELOPMENT PARTNERSHIP
LLC,

Plaintiff,

vs.

PATRICK JOHN LAWRENCE, JR. DBA AS
PJ’S CONTSTRUCTION; JANEL M.
ARAUJO INC; JANEL ARAUJO; ROBERT
C. SMELKER; ANNALEINE MELICIA
REYNOLDS; LEORA WHITE
THOMPSON; HEIRS OR ASSIGNS OF
LEORA WHITE THOMPSON; COUNTY
OF HAWAI‘I, JOHN DOES 1-10; JANE
DOES 1-10; DOE PARTNERSHIPS 1-10;
DOE CORPORATIONS 1-10; DOE
ENTITIES 1-10; DOE TRUSTS 1-10; AND
DOE GOVERNMENT AGENCIES 1-10;

Defendants.

CIVIL NO. 3CCV-24-0000033
(Other Civil Action)

CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing document
was served upon the following party by electronic means through the Court’s Judiciary

Electronic Filing System (“JEFS”) on March 12, 2024:

OLSON & SONS
Attorneys-At-Law
A Law Corporation
Peter S. R. Olson
P.O. Box 1688
Kailua-Kona, Hawai‘i 96745
Attorney for Plaintiff
KEAAU DEVELOPMENT PARTNERSHIPS LLC

Dated: Hilo, Hawai‘i, March 12, 2024.

/s/ Sherilyn K. Tavares
SHERILYN K. TAVARES
Deputy Corporation Counsel